

Mailed October 21, 2002

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Annual Reports for the Year Ended December 31, 2001, Filed by
Interexchange Carriers and Other Selected Entities on a Confidential Basis

RE: PSC Control Nos. 19977, 19978, 20137, 23771, 23772, and 23783

CONFIDENTIALITY DETERMINATION

On April 1 and 11, 2002, AT&T Communications of Wisconsin I, LP ("AT&T WI") (entity 265) submitted written applications seeking confidential treatment of certain information in its 2001 Interexchange Carriers and Other Selected Alternative Telecommunications Utility-Other Telecommunications Provider Entities ("ARW") annual report. The information is filed under document PSC control numbers 20137, 23771, and 23772.¹

On April 1 and 10, 2002, MCI WorldCom Network Services, Inc. ("MCI WCOM Network") (entity 3258) submitted written applications seeking confidential treatment of certain information in its 2001 ARW annual report. The information is filed under document PSC control numbers 19977, 19978, and 23783.²

In particular, both companies seek confidential treatment for the Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes and Wisconsin Gross Intrastate Operating Telecommunications Service Revenue³ information on lines

¹ Confidentiality Request Nos. 20137 (April 1, 2002) and 23771 and 23772 (April 11, 2002).

² Confidentiality Request Nos. 19977 (April 1, 2002) and 19978 and 23783 (April 10, 2002).

³ This data is used to determine assessable revenues for intrastate universal service fund ("USF") assessment purposes.

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1-5 and 6, respectively, on page 6 of their respective 2001 ARW annual reports. For the reasons stated herein, confidential treatment for the above specifically identified data is **DENIED**.

The Public Service Commission ("Commission") has the authority to compel the submittal of this information pursuant to Wis. Stat. § 196.499 or other applicable provisions of Wis. Stat. ch. 196. This confidentiality determination is made pursuant to Wis. Admin. Code § PSC 2.12.

Background

On May 30, 2001, the Commission issued a Confidentiality Determination⁴ concerning the 2000 ARW annual report filings.⁵ In its consolidated confidentiality determination dated March 14, 2002, the Commission found it reasonable to apply those findings of its Confidentiality Determination to 2001 annual report filings.

AT&T WI and MCI WCOM Network are interexchange carriers ("IXCs") which are required to file an ARW annual report with the Commission. The statutory filing date for the ARW annual report covering 2001 calendar year operations was April 1, 2002; eight IXCs and other selected entities were required to file, and have filed, this report for the 2001 calendar year.

For the 2001 ARW annual report program,⁶ which was released on February 15, 2002, the Commission implemented a paperless filing process. The 2001 ARW program did not contain padlocks allowing users to file selected information on a confidential basis by locking the padlock next to the protected data, consistent with the Commission's May 30, 2001,

⁴ On July 18, 2001, the Commission issued an Order Denying Reconsideration, Reopening, and Stay concerning this matter. Subsequent to the issuance of the Commission's July 18 order, AT&T WI and MCI WCOM Network obtained a court-ordered stay permitting continued confidential treatment of selected portions of their 2000 filings.

⁵ The 2001 ARW annual report replaces the Calculation of Assessable Revenues Worksheet formerly used for 2000 calendar year reporting and essentially requires information identical to that requested for the 2000 calendar year.

⁶ The 2001 ARW annual report program is actually a subset of the 2001 Other Telecommunications Annual Report Program. The 2001 Other Telecommunications Annual Report Program is used by five different categories of telecommunications entities to file annual reports with the Commission.

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Confidentiality Determination. All 2001 ARW annual report filings were to be accomplished via e-mail, with an encrypted, zipped attachment containing the exported 2001 annual report information, together with an export status report and edit check listing.

Discussion

On April 1, 10, and 11, 2002, AT&T WI and MCI WCOM Network manually filed their 2001 ARW annual reports, requesting confidential treatment of the Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes and Wisconsin Gross Intrastate Operating Telecommunications Service Revenue information contained on the Assessable Revenues schedule on page 6, over and above that provided for in the 2001 ARW annual report program. The two companies' filings contained confidential hard copy pages, a confidential diskette containing annual report program files, and a complete public version of the 2001 report, the latter which is currently available on the Commission's web page.

In AT&T WI's notarized affidavits accompanying the filings, it states that the revenue information is confidential and proprietary and disclosure of the information would allow competitors to use it to their competitive advantage and to the detriment of the company. Specifically, the company posits that competitors could derive AT&T WI's market share, assess the relative efficacy of the company's marketing and strategic business plans in Wisconsin, gain insight into AT&T WI's economic and business planning information, and make changes to their own business and marketing plans based on an analysis of the company's confidentially-filed revenue information. AT&T WI also claims that the information constitutes trade secrets under Wisconsin law and should be protected from public disclosure pursuant to Wis. Stat. §§ 19.36(5), 134.90, and 196.14. The company notes that this revenue information is neither generally

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available to the public nor generally known outside the company. AT&T WI states that it maintains internal procedures to protect the information and requests confidential treatment in other regulatory filings.

MCI WCOM Network claims that the information sought to be protected is sensitive, competitively-useful, proprietary, and trade secret business information. In addition, MCI WCOM Network posits that the information at issue could reveal the company's strategic market position, entry strategy, ability to provide services in particular areas of the state, and even the quality of and limitations on those services and offerings. The company argues that if the Commission makes the revenue information publicly available, competitors could draw accurate conclusions regarding how MCI WCOM Network serves its customers, the company's plans for entering the market and bringing new products to its existing markets, and its success rates in winning and retaining new customers based upon those business decisions. The company believes that competitors could use the information to respond to MCI WCOM Network's market-gaining efforts by converting the revenue information into market share data and target their winback efforts in those areas and to those customers where MCI WCOM Network is shown to be gaining ground. The company claims that public release of the information could cause competition to suffer in the state. The company also notes that only a limited number of employees currently have knowledge of the requested confidential information, stating that absence of confidential handling by the Commission would significantly increase that number. Finally, the company states that there have rarely, if ever, been requests from the public at large to examine the revenue information at issue.

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In issuing its March 14, 2002, consolidated confidentiality determination applying to all ARWs, the Commission balanced the concerns of the parties submitting confidential commercial or financial information and that of the interest of the public in accessing that information. This careful balancing of competing interests affects both the competitive nature of the telecommunications industry and the performance of the Commission's public responsibilities. As the telecommunications industry becomes increasingly competitive, companies increasingly assert that the information they provide to the Commission is competitively sensitive.

AT&T WI and MCI WCOM Network assert that the information provided, if released, would aid a competitor. However, it is difficult to reconcile confidential treatment of annual reports for these two companies with annual reports of the other six ARWs that have not sought the same.

Confidential treatment of Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes and Wisconsin Gross Intrastate Operating Telecommunications Service Revenue information in AT&T WI and MCI WCOM Network's 2001 ARW annual reports is **denied**. Trade secret status for such information under Wis. Stat. §§ 19.36(5) and 134.90(1)(c), as claimed by both companies, is likewise **denied**.

The Commission reiterates the provisions and reasoning contained in its March 14, 2002, confidentiality determination concerning the 2001 ARW annual report, in which it denied provisional confidential treatment to all information in the to-be-filed 2001 ARW annual reports. Confidential treatment for this information was denied because this information would not aid a competitor of a public utility.

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The Commission is not persuaded that the statewide revenue information cited by AT&T WI and MCI WCOM Network in their April 2002, filings warrant provisional confidential treatment. Both companies have failed to provide any specific, convincing evidence, beyond mere allegation, that disclosure of the information at issue truly enables competitors to harm their respective businesses. The Commission does not believe that the statewide revenue information at issue is specific enough to allow competitors to target strategic plans to certain market areas, as claimed by AT&T WI and MCI WCOM Network.⁷ Finally, the Commission does not believe that Wisconsin revenue qualifies as a trade secret under Wis. Stat. §§ 19.36(5) or 134.90(1)(c).

Pursuant to its jurisdiction under Wis. Stat. §§ 196.02(1), 196.14, and other provisions of Wis. Stat. ch. 196 and Wis. Stat. §§ 19.32-.39, as may be pertinent hereto, the Commission denies confidential treatment to AT&T WI and MCI WCOM Network's Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes and Wisconsin Gross Intrastate Operating Telecommunications Service Revenue information contained in their 2001 ARW annual reports.

This confidentiality determination is not a final determination under the Public Records law; it is the Commission's decision for purposes of managing its files. This confidentiality determination does not prejudice the right of any person to submit a public records request to inspect the contents of the filings subject to this determination.

⁷ Additionally, the Commission notes that such revenue information at issue was similarly disallowed confidential treatment in its March 14, 2002 confidentiality determinations concerning the following 2001 annual reports: Commercial Mobile Radio Service Provider (CMR) (with respect to Wisconsin Gross Intrastate Operating Telecommunications Service Revenue); Alternative Telecommunications Utility-Other Telecommunications Provider (OTH); and Alternative Telecommunications Utility-Telecommunications Reseller (RES). The Commission is currently addressing requests from three CMR entities, 11 OTH entities, and three RES entities for confidential status for items contained in such annual reports.

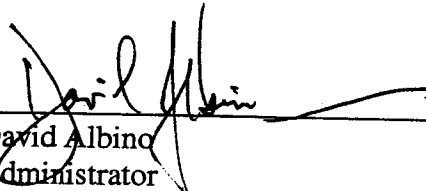
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The information for which confidential treatment is denied shall be open to public scrutiny 40 days after the issuance of this order. AT&T WI and MCI WCOM Network shall provide the Commission with a revised complete public version complying with this determination no later than three business days before the public disclosure date.⁸ Absent such filings, the Commission will proceed to make available revised public versions based on this confidentiality determination.

This order is effective upon mailing.

Dated at Madison, Wisconsin, 21 October 2002

For the Commission:



David Albino
Administrator
Telecommunications Division

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⁸ In the alternative, either (or both) company(ies) may elect to satisfy these requirements by electronically re-filing its 2001 annual report using the electronic filing capabilities contained in the 2001 ARW annual report program.